

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7677 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? o. 1

KANNAYALAL MAHENDRABHAI RAJGOR

Versus

STATE OF GUJARAT

Appearance:

MR KS NANAVATY with MR SR BRAHMBHATT for Petitioner
MR SP HASURKAR Addl.GP with MR PB BHATT Asstt.GP for Respondent No.
MR PARESH UPADHYAY for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/02/99

ORAL JUDGEMENT

Heard learned advocates for the respective parties. Leave to delete the respondent No. 2. Rule returnable today. Learned Addl. Government Pleader Mr.SP Hasurkar appears for and waives service of rule on behalf of the respondent No. 1 and Mr. Paresh Upadhyay, the learned advocate appears for and waives service of

rule on behalf of the respondent No. 3.

2. The petitioner before this Court is serving as Assistant Regional Transport Officer under the respondent No. 1 herein and challenges the Notification dated 7th September, 1998 (Annexure "L" to the petition) whereunder the respondents No.2 (now deleted) and No. 3 have been promoted as Regional Transport Officers on ad-hoc basis. It is the claim of the petitioner that he is senior to the above referred two respondents and those respondents have been wrongly promoted superseding the claim of the petitioner. It is admitted that the petitioner's case for such promotion has also been considered alongwith the other officers. However, in view of the pending disciplinary action, the decision of the Selection Committee has been kept in a sealed cover. The grievance has been made that the disciplinary action has been initiated with an ulterior motive in respect of the misconduct of misappropriation of the Government funds committed by one Mr. Vasava which misconduct was disclosed by the petitioner himself while he was serving at Bharuch during the period from the year 1987 to 1990. Learned Counsel Mr. Nanavaty has contended that the disciplinary action which has been initiated with the issuance of a chargesheet on 4th April, 1996 and has been replied to by the petitioner as far back as on 17th July, 1996 has not proceeded further since then and under the guise of pendency of the disciplinary action, the petitioner is being denied his right to promotion. Mr. Nanavaty has, therefore, relied upon the judgment of the Supreme Court in the matter of State of M.P. V. J. S. Bansal & Anr. [JT 1998 (1) S.C. 514].

3. Even if it is believed to be true that the misconduct committed by the above referred Mr. Vasava was disclosed by the petitioner, merely on that ground, the initiation of the disciplinary action cannot be held to be malafide. It would not be expedient for this Court to interfere with the disciplinary action and to direct the Government to promote the petitioner inspite of the pending disciplinary action. Even in the matter of JS Bansal (supra), relied upon by Mr. Nanavaty, the Court has held that;

"An interim order, therefore, that the sealed cover be opened and the recommendations of the departmental promotion committee for promotion of the delinquent officer may be given effect to even during the pendency of the disciplinary proceedings subject to its final result is not

usually or always or as a matter of course granted. This rule can be departed from only in exceptional case depending upon the circumstances of a particular case having regard to the fact that integrity, honesty and sincerity are the hall mark of public service. "

4. However, at the same time, the grievance made by the petitioner also cannot be said to be unjustified. It is not disputed that the disciplinary action which has started with the issuance of chargesheet on 4th April, 1996 has not been proceeded with further at all. The importance of completing the disciplinary action expeditiously has been emphasized time and again by this Court as well as the Supreme Court. However, the Government appears to be unmindful of these rulings and the interest of the delinquent and also of the Government. Considering the nature of imputation of charge made against the petitioner, I am of the view that the Government shall be given an opportunity to complete the inquiry initiated against the petitioner within the period stipulated.

5. Under the circumstances, it is directed that the disciplinary action which has been initiated against the petitioner on 4th April, 1996 shall be completed on or before 31st May, 1999. It need not be emphasized that the petitioner is expected to fully cooperate with the disciplinary/inquiry authorities. In the event the Government fails to complete the disciplinary action by 31st May, 1999 as directed hereinabove, the sealed cover in which the decision of the Selection Committee is kept shall be opened and the recommendation of the Selection Committee shall be given effect to.

6. Petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. There shall be no order as to costs.

02.02.1999. (Ms. R.M.Doshit,J.)

Vyas